

DONELAN, CLEARY, WOOD & MASER, P. C.

ATTORNEYS AND COUNSELORS AT LAW

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WASHINGTON, D. C. 20005-4078

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2-086-A037

16769F

MAR 26 1992 -3 05 PM

INTERSTATE COMMERCE COMMISSION

March 26, 1992

Recordation No. 16769

\$16.00 filing fee

Dear Mr. Strickland:

On behalf of Concord Asset Management, Inc., I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, executed counterparts of a secondary document, not previously recorded, entitled Memorandum of Clarification of Security Agreement ("Memorandum"), made as of March 20, 1992.

The parties to the enclosed Memorandum are:

Pac Rail - BORROWER  
Two Embarcadero Center  
Suite 1655  
San Francisco, California 94111

Concord Asset Management, Inc. - SECURED PARTY  
40 Richards Avenue  
Norwalk, Connecticut 06856

The said Memorandum makes clear of record the security interest covered by the related Security Agreement of February 15, 1990, recorded under Recordation No. 16769-D, and the Memorandum should be recorded under the next available letter under Recordation No. 16769 which we believe will be -F.

The units of equipment covered by the Memorandum and the related Security Agreement of February 15, 1990 recorded under Recordation No. 16769-D, are all units of rolling stock now owned or hereafter acquired by Borrower together with all interest of Borrower in leases, rentals and the like thereon.

*Concord Asset Management, Inc.*

*This one  
16769-  
F*

MAR 26 2 55 PM '92  
MOTOR OPERATING UNIT

DONELAN, CLEARY, WOOD & MASER, P C

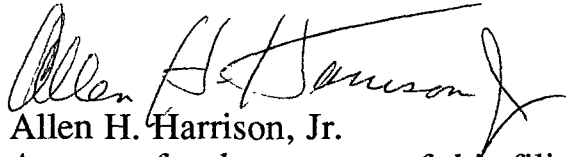
A short summary of the document to appear in the ICC Index is as follows:

"All equipment now owned or hereafter acquired and leases thereon."

Enclosed is a check in the amount of sixteen dollars (\$16.00) in payment of the filing fee.

Once the filing has been made, please return to bearer the stamped counterparts of the Memorandum not needed for your files, together with the fee receipt, the letter from the ICC acknowledging the filing, and the three extra copies of this letter of transmittal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Allen H. Harrison, Jr.", with a long horizontal flourish extending to the right.

Allen H. Harrison, Jr.  
Attorney for the purpose of this filing  
for Concord Asset Management, Inc.

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

BY HAND

**Interstate Commerce Commission**  
Washington, D.C. 20423

3/26/92

OFFICE OF THE SECRETARY

Allen H. Harrison

Donelan Cleary Wood & Maser

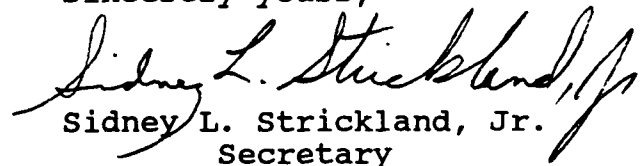
1275 K Street N.W. Suite 850

Washington, D.C. 20005-4078

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/26/92 at 3:05pm, and assigned recordation number(s). 16769-F

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

MEMORANDUM OF CLARIFICATION  
OF  
SECURITY AGREEMENT

RECORDATION NO. 16762F FILED 1425  
MAR 26 1992 3 45 PM  
INTERSTATE COMMERCE COMMISSION

This MEMORANDUM OF CLARIFICATION OF SECURITY AGREEMENT ("Memorandum") is made as of March 20, 1992, between PAC RAIL, a California corporation ("Borrower") and CONCORD ASSET MANAGEMENT, INC., a New York corporation ("Secured Party").

WHEREAS, Borrower and Secured Party entered into that certain Security Agreement dated as of February 15, 1990, recorded with the Interstate Commerce Commission ("ICC") on February 20, 1990 at 12:05 p.m. under Recordation No. 16769-D; and

WHEREAS, under paragraph 1.5 of the Definitions section of the said Security Agreement, the term "Equipment" is defined to mean and include "... all equipment now or hereafter owned by or in the possession of or acquired by Borrower, ..."; and

WHEREAS, under paragraph 1.11 of the Definitions section of the said Security Agreement, the term "Lease" is defined to mean and include, "... any lease, rental or other agreement granting ... now or hereafter the right to use any item of Equipment ..."; and

WHEREAS, under paragraph 1.4 of the Definitions section of the said Security Agreement, the term "Collateral" is defined to mean and include, among other things, "(i) the Equipment; (ii) all right, title and interest of Borrower in and to, ..., the Leases and any lease, rental agreement or other agreement(s) respecting the Equipment ..."; and

WHEREAS, under paragraph 2.1 of the Creation of Security Interest section of the Security Agreement, subject to Permitted Encumbrances, Borrower

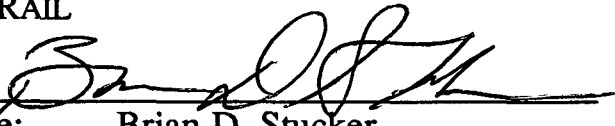
granted " . . . to Secured Party a continuing, first priority security interest in and lien upon the Collateral whether now or hereafter coming into possession of the Borrower . . ."; and

WHEREAS, through inadvertence the transmittal letter of February 20, 1990 filing, among other documents, the said Security Agreement, did not, under the provisions in the Note under 49 C.F.R. § 1177.3, indicate for indexing that the said Security Agreement covered rolling stock now owned or hereafter acquired by Borrower and all interest of Borrower in leases, rentals and the like thereon;

NOW THEREFORE, to verify the fact that said Security Agreement covers, encumbers and places a lien in favor of the Secured Party upon all rolling stock now owned or hereafter acquired by Borrower, together with all interest of Borrower in leases, rentals and the like thereon, and to utilize the privileges and rights under 49 C.F.R. § 1177.3 for entering this coverage in the index maintained by the ICC under 49 U.S.C. § 11303(b), Borrower and Secured Party enter into this Memorandum as of the date herein first above written.

IN WITNESS WHEREOF, Borrower and Secured Party hereto have caused this Memorandum to be executed in their respective names, by officers thereof duly authorized, all as of the date herein first above written.

PACRAIL

By:   
Name: Brian D. Stucker  
Title: Executive Vice President

CONCORD ASSET MANAGEMENT, INC.

By: \_\_\_\_\_  
Name: Peter R. Poole  
Title: Vice President

STATE OF CALIFORNIA            )  
  )  
COUNTY OF SAN FRANCISCO    )       SS:

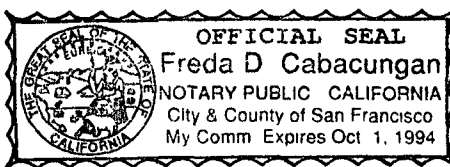
BEFORE ME, the undersigned notary, on this day personally appeared Brian D. Stucker, to me personally know who, being by me duly sworn, says that he is Executive Vice President of PAC RAIL ("PR"), that the above Memorandum of Clarification of Security Agreement ("Memorandum") was signed by him on behalf of PR by authority of its Board of Directors and he has acknowledged that the execution of the foregoing Memorandum was the free act and deed of PR.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23<sup>rd</sup> day of March, 1992.

[Seal]

Freda D. Cabacungan  
Notary Public

My Commission Expires: 10/1/94



STATE OF CONNECTICUT

)

)

SS:

COUNTY OF FAIRFIELD

)

On this \_\_\_\_ day of \_\_\_\_\_, 1992 before me, the undersigned, a Notary Public in and for the State of Connecticut, duly commissioned and sworn, personally appeared Peter R. Poole, to me known to be the person who signed as Vice President of CONCORD ASSET MANAGEMENT, INC., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires:

**MEMORANDUM OF CLARIFICATION  
OF  
SECURITY AGREEMENT**

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This MEMORANDUM OF CLARIFICATION OF SECURITY AGREEMENT ("Memorandum") is made as of March 20, 1992, between PAC RAIL, a California corporation ("Borrower") and CONCORD ASSET MANAGEMENT, INC., a New York corporation ("Secured Party").

WHEREAS, Borrower and Secured Party entered into that certain Security Agreement dated as of February 15, 1990, recorded with the Interstate Commerce Commission ("ICC") on February 20, 1990 at 12:05 p.m. under Recordation No. 16769-D; and

WHEREAS, under paragraph 1.5 of the Definitions section of the said Security Agreement, the term "Equipment" is defined to mean and include "... all equipment now or hereafter owned by or in the possession of or acquired by Borrower, . . ."; and

WHEREAS, under paragraph 1.11 of the Definitions section of the said Security Agreement, the term "Lease" is defined to mean and include, "... any lease, rental or other agreement granting . . . now or hereafter the right to use any item of Equipment . . ."; and

WHEREAS, under paragraph 1.4 of the Definitions section of the said Security Agreement, the term "Collateral" is defined to mean and include, among other things, "(i) the Equipment; (ii) all right, title and interest of Borrower in and to, . . ., the Leases and any lease, rental agreement or other agreement(s) respecting the Equipment . . ."; and

WHEREAS, under paragraph 2.1 of the Creation of Security Interest section of the Security Agreement, subject to Permitted Encumbrances, Borrower



granted " . . . to Secured Party a continuing, first priority security interest in and lien upon the Collateral whether now or hereafter coming into possession of the Borrower . . ."; and

WHEREAS, through inadvertence the transmittal letter of February 20, 1990 filing, among other documents, the said Security Agreement, did not, under the provisions in the Note under 49 C.F.R. § 1177.3, indicate for indexing that the said Security Agreement covered rolling stock now owned or hereafter acquired by Borrower and all interest of Borrower in leases, rentals and the like thereon;

NOW THEREFORE, to verify the fact that said Security Agreement covers, encumbers and places a lien in favor of the Secured Party upon all rolling stock now owned or hereafter acquired by Borrower, together with all interest of Borrower in leases, rentals and the like thereon, and to utilize the privileges and rights under 49 C.F.R. § 1177.3 for entering this coverage in the index maintained by the ICC under 49 U.S.C. § 11303(b), Borrower and Secured Party enter into this Memorandum as of the date herein first above written.

IN WITNESS WHEREOF, Borrower and Secured Party hereto have caused this Memorandum to be executed in their respective names, by officers thereof duly authorized, all as of the date herein first above written.

PACRAIL

By: \_\_\_\_\_  
Name: Brian D. Stucker  
Title: Executive Vice President

CONCORD ASSET MANAGEMENT, INC.

By: \_\_\_\_\_  
Name: Peter R. Poole  
Title: Vice President

STATE OF CALIFORNIA       )  
                                      )  
COUNTY OF SAN FRANCISCO   )       SS:

BEFORE ME, the undersigned notary, on this day personally appeared Brian D. Stucker, to me personally know who, being by me duly sworn, says that he is Executive Vice President of PAC RAIL ("PR"), that the above Memorandum of Clarification of Security Agreement ("Memorandum") was signed by him on behalf of PR by authority of its Board of Directors and he has acknowledged that the execution of the foregoing Memorandum was the free act and deed of PR.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_ day of \_\_\_\_\_, 1992.

[Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

)  
)  
)

SS:

On this 24 day of MARCH, 1992 before me, the undersigned, a Notary Public in and for the State of Connecticut, duly commissioned and sworn, personally appeared Peter R. Poole, to me known to be the person who signed as Vice President of CONCORD ASSET MANAGEMENT, INC., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

[Seal]

Bridget R. Connolly  
Notary Public

My Commission Expires:

BRIDGET R. CONNOLLY  
Notary Public, State of Connecticut  
No. 01677  
County of Fairfield  
Commission Expires 4/30/96